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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion for the purpose of considering policies and guidelines regarding the allocation of gains from sales of energy, telecommunications, and water utility assets.	Rulemaking 04-09-003

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES

Pursuant to Ordering Paragraph No. 11 of California Public Utilities Commission (Commission) Decision No. 06-05-041 and the Administrative Law Judge's (ALJ) Ruling regarding *Allocation of Gains on Sale of Utility Assets* issued on June 29, 2006, in this docket, and subsequent e-mail instructions by the ALJ, the California Public Utilities Commission's (CPUC or Commission) Division of Ratepayer Advocates (DRA) submits this reply to opening comments regarding the definition of "major facilities." As reply comments are due Friday, September 8, 2006, these comments are timely filed.

I. BACKGROUND

Decision (D.) 06-05-041 deferred judgment on three issues that were not adequately supported by evidence in the record. The Commission in these reply comments seeks comment on the definition of a reasonable threshold for the term "major facility" as used in Public Utilities Code §455.5, subd. (f).[1] Pursuant to the August 14, 2006, ruling of ALJ Thomas, DRA participated in several informal telephone conferences among California utilities and interested parties on this question. The parties were not

[1] All further statutory references shall be to the Public Utilities Code unless specified otherwise.

able to arrive at a single definition for every utility type, but the parties substantially narrowed the range of dispute.

II. DISCUSSION

DRA agrees with and adopts by reference the *Reply Comments Of Aglet Consumer Alliance* submitted by e-mail to the parties in this docket on September 7, 2006, with respect to a recommended definition of "major facility" as applicable to electric and natural gas utilities. DRA, however, suggests that the Commission adopt a definition of "major facility" that also includes generation or production facilities of $30 million net plant value or greater. DRA is also concerned that application this definition not be misconstrued as altering the requirements of section 851, the main subject of this proceeding.

Finally, DRA will submit comments regarding the definition of "major facility" with respect to water utilities in a separate filing.

A. DRA Agrees With Aglet's Recommended Definition Of "Major Facility" And Its Analysis Supporting That Definition, With Minor Modification.

As discussed in Aglet's comments, the threshold of 50 megawatts (MW) or 1% of retained utility system capacity would include the bulk of the investor owned utilities' generation assets, but would exclude smaller facilities that do not comprise a significant percentage of utilities' production. This compromise balances the ratepayers' desire to avoid paying for upkeep costs on property that is not used for utility purposes against the utilities' desire to avoid being required to report disuse of every facility, no matter how small, that does not provide substantial benefit to consumers and presumably also requires little expense for upkeep during disuse. DRA notes, however, that the 1%/50 MW threshold excludes some facilities of substantial value, namely, PG&E's De Sabla and Newcastle hydro facilities, which carry a current new plant value of $37.3 million and $55.9 million, respectively. As such plants presumably require upkeep costs proportionate to their value, DRA additionally suggests a threshold of $30 million in net plant value triggering the 455.5 notice requirements.

B. The Definition Of "Major Facility" Does Not Impact The Requirements Of Section 851.

DRA seeks to clarify that the definition of "major facility" under section 455.5 does not impact whether a utility must report the sale of utility property pursuant to section 851. Section 455.5 requires that utilities report when a facility has been out of service for nine months or more, so that the Commission can consider disallowing any expenses related to maintenance of that facility. In contrast, section 851 requires that a utility notify the Commission before disposing of utility property.

While the two statutes are somewhat related in the useful life of utility property (property that is in disuse for 9 or more months is more likely to be sold due to disuse than currently useful property), it is not clear to DRA why the OIR in this docket pursued a definition for use in section 455.5. The primary purpose of this rulemaking was to set a standard allocation of gains on sale of utility property between ratepayers and shareholders. Section 455.5 is primarily driven by the desire to minimize ratepayer costs for property that is no longer used for utility purposes. Section 851, however, attempts to balance the goals of motivating utility management to dispose of property that is no longer useful against ratepayers' desire to prevent churning of utility property, i.e., sale of property that may be useful for utility purposes. Section 455.5 thus calls for different analysis than that appropriate for section 851.

Further, section 851 already utilizes a streamlined process in which to address smaller facilities, reducing the administrative burden on utilities. Resolution ALJ-186, adopted by the CPUC on August 25, 2005, was "designed to simplify the disposition of certain types of transactions under Pub. Util. Code § 851, which requires public utilities to obtain prior authorization from the Commission before selling, leasing, assigning, or otherwise disposing of or encumbering utility property." (ALJ-186 at p. 1.) This resolution was intended to be part of a comprehensive, coordinated, studied reformation of procedures under section 851. (*Opinion Releasing Workshop Report And Closing Proceeding* filed on April 21, 2005 in P.02-02-003 at p. 5.) DRA thus seeks to ensure

that analysis of section 455.5 does not inadvertently color the Commission's application of section 851.

III. CONCLUSION

DRA urges that the Commission adopt Aglet's suggested definition of "major facilities" with respect to electric and natural gas utilities, with the additional threshold that facilities with net plant value of $30 or greater should also fall within the definition of "major facilities."

Respectfully submitted,

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September 8, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**REPLY COMMENTS TS OF THE DIVISION OF RATEPAYER ADVOCATES" in R.04-09-003** by using the following service:

[**X**] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **September 8, 2006** at San Francisco, California.

/s/ NELLY SARMIENTO

NELLY SARMIENTO

N O T I C E

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